IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

CWP No.717 of 2002

Reserved on : 16.8.2007

Date of Decision : August 31st, 2007

Roshan Lal Sharma …petitioner

Versus:

Uco Bank and Others …Respondents.

***Coram*:**

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *Yes*

For the petitioner: Mr. Vikram Thakur, Advocate vice Mr. Shrawan Dogra, Advocate

For the respondents. Mr. Vinay Kuthiala, Advocate.

Sanjay Karol, J.

The present appeal has been filed inter alia seeking following prayers :-

i) That the rejection of application of petitioner for voluntary retirement under Voluntary Retirement Scheme 2000, communicated to the petitioner by Regional Manager, Dharamshala vide letter at Annexure P-3 dated 4.4.2001 may be quashed and set aside.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

ii) That the respondent Bank may be directed to consider the application of petitioner for voluntary retirement in accordance with Voluntary Retirement Scheme circulated vide circular dated 16.11.2001. Annexure P-1 expeditiously, on merit."

On 16.11.2000, the respondent bank circulated a Voluntary Retirement Scheme, 2000 known as the "Uco Bank Employees' Voluntary Retirement Scheme, 2000" (hereinafter referred to as 'the Scheme').

At the relevant time, petitioner was working as Special Assistant with the respondent bank. To avail the benefit of the Scheme, he submitted his application on 30.1.2001 to respondent No.4 and on the same date also sent a copy directly to the Head Office of the respondent bank in Calcutta. On 4.4.2001, petitioner was informed by the Regional Manager, Dharamshala that his application could not be considered under the said Scheme as the same was not submitted in time. Aggrieved by the same, on 11.4.2001, petitioner represented to the Deputy General Manager (Personnel) and in the absence of any response, also got served a legal notice on 8.10.2001.

The challenge to the action of the respondents as argued by the learned counsel for the petitioner, inter alia is on the ground that in accordance with the Scheme, the petitioner's application was duly submitted within the stipulated period of time, therefore, the same ought to have been considered. The contradiction in the Scheme and also the ambiguity in relation to

the shorter period made available for exercising the option under the Scheme had to be interpreted liberally, to advance the object of the scheme. The Scheme is discriminatory inasmuch as the employees posted at the Headquarter are at a greater advantage in submitting their applications than ones who are serving at far of places. There cannot be sub-classification of the employee and the object of the scheme would be defeated if unequal opportunity is afforded to persons similarly situated.

The respondents have filed an affidavit inter alia stating that under the scheme, there is absolute discretion with the bank in either accepting or rejecting the request of the employee. The discretion is to be exercised keeping in view the exigencies of duties and service required to be rendered by the bank towards its customers and the bank cannot be left without an employee. The order is not perverse as the petitioner has slept over his right and not submitted the application in time. Learned counsel for the respondents has relied upon ***Bank of India*** vs. ***O.P. Swarnakar*** (2003(2) SCC 721) and ***HEC Voluntary Retd. Employees Welfare Society*** vs. ***Heavy Engg. Corpn. Ltd***. (2006(3) SCC 708), to contend that the terms and conditions of the Scheme are governed by contract and by not any statute. It was a package floated in the interest of the bank and the respondents had to accept the terms as it is. According to him, the Scheme was merely an invitation to offer

and in the absence of any offer made by the petitioner in time, no right in law accrues to him.

From the relevant provisions of the Scheme, it is clear that an employee opting for voluntary retirement, under the Scheme, is required to submit his application on a prescribed format on or after 1.1.2001 but not beyond 31.1.2001. The said application was to be directly addressed to the Deputy General Manager (Personnel), Personnel Department, Head Office, Calcutta in an envelope marked "OFFER TO SEEK VOLUNTARY RETIREMENT". Relevant provisions of Clause (a) of the Scheme is reproduced as under:-

> "(a) An employee opting for voluntary retirement under the Scheme is required to submit duly filled in application on prescribed format (Annexure-1A to this Circular alongwith its appendix) on or after 1st January 2001 but not beyond 31st January, 2001 directly addressed to the Deputy General Manager (Personnel), Personnel Department, Head Office, Calcutta in an envelope marked "OFFER TO SEEK VOLUNTARY RETIREMENT. Employee submitting application under the Scheme is required to ensure that the application reaches Personnel Department, Head Office, Calcutta within the prescribed time limit."
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> . (Emphasis supplied)

Simultaneously, an employee was also required to submit the same application in triplicate to the Branch Manager where the employee was posted, which in turn, was to be forwarded to the Personnel Department, Head Office, Calcutta.

The competent authority was to consider the application on the basis of first come first serve, subject to the discretion with regard to the strength of number of employees to be considered for entitlement and benefit under the Scheme. The Scheme was open for a period of 31days.

The contents of the Scheme are unambiguous and the terms are unequivocal. It is clearly stipulated that the employee submitting the application under the Scheme is required to ensure that the application reaches the Personal Department, Head Office, Calcutta, within the stipulated time limitation. The Scheme had come into effect on 16.11.2000 and was widely circulated and the employees had sufficient notice thereof. The scheme clearly stipulated that the applications to be submitted must reach the Head office between 1.1.2001 and 31.1.2001. Therefore, any employee seeking benefit under the scheme had sufficient notice not only to decide and to opt under the Scheme but also complying with the same. The application was to be submitted directly to the Head Office and simultaneously the same application, was to be submitted in triplicate through the various administrative and hierarchical channels of the Bank. Keeping in view the object, purpose as well as terms of the scheme, the Bank had to take a decision with regard to number of employees it could permit to be retired. Obviously, the functioning of the Bank could not have been put to a stand still. The simultaneous filing of the

applications and processing thereof is only for the purpose of administrative convenience.

In the present case, the application was submitted by the petitioner only on 30.1.2001. Therefore, no fault can be found with the respondents in rejecting the same as the same was obviously received after the stipulated date. It is not the petitioner's case that application was submitted at the Head Office in Calcutta. The same was submitted with the Branch Manager and obviously the same could not have been processed, through the various channels and reached the Head Office within the stipulated period of time.

The Scheme itself stipulated that the application received after the option under the Scheme shall not be entertained unless revised instructions are issued by the office of the General Manager (Personnel). It is an admitted case of the parties that the same has not been revised at all.

It cannot be said that petitioner's application was submitted in time, within the stipulated period and in accordance with the terms of the Scheme. In my view, there is no contradiction or ambiguity in the scheme at all. Nor is the scheme discriminatory in any manner. To say that the employees in the Calcutta were at a greater advantage and that the scheme perpetuates and creates two separate classes of employees is also not correct and acceptable. All of the

employees were fully aware of the terms of the scheme and had sufficient notice and time to act in terms thereof.

In ***HEC Voluntary Retd. Employees (supra),*** the Court held as under:-

> "A voluntary retirement scheme is only an invitation of offer floated. When pursuant to or in furtherance of such a voluntary retirement scheme an employee opts therefore, he makes an offer which upon acceptance by the employer gives rise to a concluded contract between the employer and the employee."
>
> "Unless a statute or statutory provision interdicts, the relationship between parties to act pursuant to or in furtherance of the voluntary retirement scheme is governed by contract."

In ***Bank of India(supra),*** the Court held as under:-

> "Thus, the nationalized banks in terms of the Scheme had secured for themselves an unfettered and unguided right to deal with the jural relationship between themselves and their employees."

Looking from another angle, the petitioner has not assailed the terms of the scheme in the present writ petition. In fact he has accepted and acted on the same and accordingly submitted his application to take benefit under the said scheme. Therefore, it would not be open for the petitioner to now contend that the scheme is arbitrary and discriminatory.

In this view of the matter, I find no infirmity with the action of the respondents and consequently the writ petition is dismissed.

(Sanjay Karol),
Judge.

August 31st , 2007
(*rana*)